87-196

No.

Supreme Court, U.S.
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IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1987

ARTHUR DOBBS,
Petitioner,

vs.

FORD MOTOR COMPANY; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW; AND LOCAL 980 UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

SECTION I

1. Because a grievance claim of wrongful discharge which a union local had withdrawn is revived by order of the trial court and then resolved by an arbitration award during the course of litigation against the employer and union, is the fired worker arbitrarily precluded thereafter from a plenary hearing on other claims asserted (a) which were not resolvable by the labor arbitration and (b) which would have been adjudicated in a plenary hearing had the grievance not been revived?

2. After a trial court has revived a labor arbitration and an arbitration award has been rendered, does dismissal of the fired worker's claims for breach of duty of fair representation, employer subversion, counsel fees, and other relief, where such claims

are supported by manifestly sufficient evidence, conflict with decisions of this Court or present an important question of federal labor law which should be decided by this Court?

3. Does a labor arbitration award which declines to award four years of back pay to a wrongfully fired worker fail to draw its essence from the collective bargaining agreement when it is based on a letter from the employer to the union which is not part of the text of that agreement and would violate the union constitution and 29 U.S.C. §158(d) if permitted to modify or be part of that agreement? May such an award overrule an opinion and order of the court which are submission documents?

QUESTIONS PRESENTED FOR REVIEW
SECTION II

1. May a trial court modify or vacate the unambiguous language of a labor arbitration award(in favor of a wrongfully discharged worker)on the basis of matters which were not made part of the record before the arbitrator where the court concedes that the award draws its essence from the collective bargaining agreement?

2. May a trial court take any action which has the effect of modifying or vacating a labor arbitration award where both employer and union are precluded from applying for such relief by the statute of limitations and the applicable doctrine of waiver?

3. What constitutes actionable post award employer repudiation of collective bargaining agreement grievance procedure?

4. What constitutes actionable post award breach of duty of fair representation and fiduciary duty by a union local?

5. What constitutes actionable post award breach of duty of fair representation and fiduciary duty by a parent union?

(b)

LIST OF ALL PARTIES

SECTION I

Arthur Dobbs, Petitioner.

Ford Motor Company, Respondent.

Local 980, International Union, United Automobile,Aerospace,And Agricultural Implement Workers of America,UAW, Respondent.

The International UAW was also joined as a party. The complaint, as to that dedendant, was dismissed on motion and no appeal was taken from that dismissal.

Section I relates exclusively to District Court No. 82-2170; Circuit Court No.86-5787.

(b)

LIST OF ALL PARTIES

SECTION II

Arthur Dobbs, Petitioner.

Ford Motor Company, Respondent.

Local 980, International Union, United Automobile, Aerospace, And Agricultural Implement Workers Of America, Respondent.

International Union, United Automobile, Aerospace, And Agricultural Implement Workers Of America, UAW, Respondent.

Section II relates to District Court No.85-5660; Circuit Court No.86-5782.

(c)

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No.

IN THE SUPREME COURT

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UNITED STATES

October Term, 1987

ARTHUR DOBBS,
Petitioner,
vs.
FORD MOTOR COMPANY; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW: AND LOCAL 980 UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Arthur Dobbs, the plaintiff in the proceedings below, petitions for a writ of certiorari to review judgments of the United States Court of Appeals for the Third Circuit in two cases. The two cases

involve closely related questions and identical parties. This petition accordingly covers both cases pursuant to RULE 19.4.

The petition is divided into two sections.

Section I contains the questions and reasons relied on relating to Court Of Appeals No. 86-5787, District Court No. 82-2170. This action contains claims which arose before a labor arbitrator rendered his award.

Section II contains the questions and reasons relied on relating to Court of Appeals No. 86-5782, District Court No. 85-5660. This action contains claims which arose after the award.

Each section is presented in the form prescribed by RULE 21.

(d)

OPINION BELOW

There was no opinion in Third Circuit Court of Appeals, Docket No.86-5787. The order of the court, dated, May 15,1987, is as follows.(It appears in full at Pa40)

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court entered October 15,1987[sic]be and the same is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,
/s/Weis
Circuit Judge

The opinion of the district court is unreported. It is set forth in the Appendix.*

(e)

JURISDICTION

The date of the judgment sought to be reviewed is May 15, 1987. The subject matter jurisdiction of the district court is based on 29 U.S.C.§185(a).

Jurisdiction is conferred on this Court by 28 U.S.C.§1254(1).

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* Pa18

(f)

STATUTES INVOLVED

The relevant portion of 29 U.S.C.§185(a) (Section 301(a), Labor Management Relations Act) is set forth in the Appendix. (Pa41)

The relevant portion of 29 U.S.C.§158(d) provides that

> For purposes of this section, to bargain collectively is...the execution of a written contract incorporating any agreement reached if requested by either party...

The relevant text of Article 19 of the UAW Constitution,Section 4 is as follows.

> National agreements and supplements thereof shall be ratified by the Local Unions involved.

(g)

STATEMENT OF THE CASE

Nature Of The Case

Petitioner's complaint claims that he was fired by respondent Ford in violation of the collective bargaining agreement(hereafter "CBA") between his employer and the UAW. He claims all relief available under the CBA

and at law. In order to proceed against his employer, he was obliged to claim simultaneously that his union local breached its duty of fair representation(hereafter "DFR") when it withdrew his grievance. He also claims that his grievance was withdrawn because of employer subversion of the CBA procedure(hereafter "ES").(Pa50)

Breach of DFR has been the subject of numerous opinions since Vaca v.Sipes,386 U.S. 171(1967). ES has been discussed in only one case since Vaca, Dogherra v.Safeway Stores, Inc.,670 F.2d 1293(9th Cir.1982).

Course Of Proceedings Below

Through March 25,1985, motions were filed and disposed of as follows.

The unions' first motion for summary judgement was denied except for the issue of punitve damages which were stricken as to the unions.* A second motion for summary judgment was denied with respect to Local 980 and granted with respect to the UAW International.

*Pa1

A Ford motion for summary judgment was denied with respect to all claims arising under 29 U.S.C.§185(a) and the CBA and granted with respect to some ancillary state claims. At the invitation of the district judge, Ford then moved to reinstitute the withdrawn grievance; it also moved to dismiss the complaint. By ORDER of March 25, 1985, the district court revived the grievance and refused to dismiss. However,it ordered that the action be"administratively terminated". (Pa4)

The CBA arbitrator(hereafter the "umpire") rendered his award(hereafter the "DECISION") in July, 1985. He ruled that petitioner's discharge violated the CBA, restored him to his "former position",* but declined to address the issue of back pay* on the basis of a letter written by Ford to the UAW in 1976. Petitioner filed a timely motion to vacate the objectionable portion of the DECISION. He also moved to

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*Pa14

vacate the administrative termination and proceed to trial on all issue not resolved or resolvable in the CBA arbitration. By opinion and order of October, 1986, the district court denied the application to vacate the portion of the DECISION of the umpire claimed to be defective and refused to allow petitioner to proceed to a plenary hearing on any claim. (Pa18,38)

The district court opinion confused or,rather fused,this action with a related action on which the court ruled at the same time. The related action is Docket No. 86-5782,Third Circuit Court of Appeals.*

Those portions of the opinion which relate to this action are reproduced in the Appendix. (Pa18 et seq.)

Statement Of Facts

The following facts are not disputed.

Petitioner, a Ford assembly plant employer since 1972, was on conditional medical leave through May 5, 1981, with no notice

*The subject of Section II of this petition.

that his leave status was being questioned. On May 1,1981(a Friday), Ford mailed a five-day notice to report to the plant for(Pa42) medical examination by certified mail. The notice did not conform to the form specified by the CBA as the form which can constitute a basis for firing. Though petitioner's address was 52 Dover Street, Newark, New Jersey, the notice was mailed to 52 Doyer Street, Newark. The Doyer spelling appears on only one of many Ford records. The incorrect spelling arose because some time in 1977 Ford personnel mistook petitioner's handwritten V for a Y and carelessly failed to compare it with handwritten V in the worde "Ave." on the same record. (Pa42,16)

On May 13, he reported to work at Ford and was told that he was fired, for failing to respond to the notice,as of May 11. He denied having received the notice. Unknown to him, the post office changed Doyer to Dover and made an unsuccessful delivery attempt on May5. On May 15, after his appearance at Ford, he received a slip to

pick up a certified letter at the nearest post office. He obtained the certified mail there on Saturday, May 16.

When Ford fired petitioner on May 13, it had no proof as to whether or not he had received the notice. A few days later Ford received the standard green card which petitioner signed on May 16, complete proof that he did not receive a notice on or about May 4 and that he did receive it on May 16. But Ford did not reinstate petitioner. (Pa44)

Local 980 filed a timely grievance, which correctly made four claims:1."...aggrieved was on medical leave." 2."...received no such quit notice". 3."...aggrieved followed all company rules pertaining to extending such medical leave". 4."...therefore Union contends discipline was unjust". All facts needed to substantiate these claims were in Ford records. (Pa43)

This was a second stage grievance which was withdrawn before the end of second stage.

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No hearing of any kind took place because the grievance was withdrawn* before the stage at which hearings take place. The only written reason for withdrawal appears in a union letter of March 17, 1982. (Pa45)

> For reasons the Union felt that they did not hold merit to move to the Third Stage of the Collective Bargaining Agreement.

By letter of Ford counsel of October 22, 1984, Ford admitted furnishing the union with false information:that petitioner received the notice on May 4, 1981. (Pa46)

> At the time that the grievance was filed, Ford's Labor Relations Department believed that plaintiff had received the notice to report for physical on May 4, 1981. Even though the employee's actual receipt of the notice was not a prerequisite to his termination, the Labor Relations Department (based upon a good faith belief) that the notice had been delivered on the fourth) advised the union of delivery on that date.

The only disputed fact of any relevance is petitioner's contention that he actually was at the plant medical department on May 4 or 5 to process the final extension of his medical leave, May 4 being the very day he was directed to be there in the notice which

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*January, 1982

he did not receive until May 16. His contention appears in an affidavit filed in opposition to one defendant's motions to dismiss. The umpire did not rest his DECISION on this contention which is not essential to any relief claimed by petitioner. (Pa8 et seq.)

Petitioner was not recalled to work until June, 1986, pursuant to the DECISION of July, 1985.

Statement Of Related Case

Pursuant to RULE 19.4 this petition is filed to cover also the Third Circuit JUDGMENT ORDER in Docket No.86-5782, which is related to this action. This action arises from the discharge of petitioner in May, 1981, and his claim that a defective portion of the umpire's DECISION should be vacated. The related action seeks to confirm and enforce the portion of the DECISION which is not objectionable and claims relief for POST AWARD conduct of respondents, only—

conduct which occurred only after the umpire rendered his DECISION in July, 1985.*

(h)(i)

BASIS FOR FEDERAL JURISDICTION
IN THE DISTRICT COURT

This action, based primarily on 29 U.S.C.§185(a), was filed in the Superior Court of New Jersey. Respondent Ford immediately moved for transfer to The United States District Court For New Jersey, which has jurisdiction pursuant to 28 U.S.C§1331 .

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* The related action is the subject of Section II of this petition, page 29 et seq.

(j)

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

Question No.1-Section I

At the outset, it must be stressed that this action does not involve a trivial grievance. Petitioner was fired from his job. His Section 301(a) action is based on the theory that conduct of his union, or his employer, or both undermined the CBA grievance process and caused an unfavorable outcome.* Vaca v.Sipes,386 U.S.171(1967);Hines v.Anchor Motor Freight,424 U.S.554(1976). If petitioner could establish undermining, he was eligible to claim again the wrongfulness of his discharge on CBA grounds. In most reported cases, relief arrives, if at all, in the litigation. In this action,after three years of litigation,the district judge fashioned excellent relief before a plenary hearing. He revived the abandoned grievance which was clearly not "frivolous" or "fruitless".Vaca,386 U.S.191,194.

*See SECOND PRE-TRIAL ORDER,Pa50.

He could not have done so if this action were not different from Vaca and Hines and most reported cases in which the union has prosecuted the grievance into or through an advanced CBA hearing stage with negative result. In such cases, the union has, by proceeding to such hearing stage, virtually conceded that the grievance is not "frivolous" or "fruitless", and the principal issue is whether its conduct of the grievance involved breach of DFR which was a proximate cause of the unfavorable result. In this action (like Dutrisic v.Caterpillar Tractor Co., 749 F.2d 1270(9th Cir.1983)),the grievance was abandoned before an advanced stage. The abandonment must be the proximate cause of the unfavorable outcome, because it precluded any other possible result, and the only issue is breach of DFR(or ES). Under these circumstances, breach of DFR is based on the infrequently cited language of

Vaca relating to the duty to process grievance claims which are not frivolous and fruitless(386 U.S.194).

> In a case such as this, when Owens supplied the Union with medical evidence supporting his position, the Union might well have breached its duty had it ignored Owens' complaint or had it processed the grievance in a perfunctory manner.

In this action, after denial of three motions for summary judgment had demonstrated that petitioner's claims were not frivolous, the district judge revived the grievance.[1] (The subsequent umpire's DECISION elevated the claims from non-frivolous to meritorious as a matter of law.) Having fashioned this relief, the district judge, in refusing to vacate the administrative dismissal[2] after petitioner returned to court from the largely successful CBA arbitration, simply denied petitioner the right to litigate (a) those claims[3] which were not disposed of by the CBA arbitration,many of which had survived motions for summary judgment, and

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[1] Pa4 [2] Pa38 3 See claims at Pa50. Most claims along with counsel fees were the subject of motions in limine.

which (b)arose through and because of the litigation and were never resolvable by CBA arbitration. The reasoning of the district court is not clear. If it refused to permit petitioner to proceed to plenary hearing of his unarbitrated claims merely because there had been an award on the CBA issues, the opinionless affirmance of the Third Circuit sanctions an unprecedented departure from the usual course of judicial proceedings by the district court which has never been addressed by this or any other court.

In Section 301(a)actions arising from grievance withdrawals which occur before advanced CBA stages, the frivolity issue can usually be resolved on motion early in the proceedings; on denial of a motion for summary judgment or on motion made by the plaintiff. If the ruling is not in plaintiff's favor, the case is over. If the ruling is in plaintiff's favor, the grievance can be revived immediatley, and the nonarbitrable claims arising from the liti-

gation and necessity therefor, such as the claim for counsel fees, will be smaller the faster the revival of the grievance is ordered. The denial of a plenary hearing on nonarbitrable claims which would have occurred had the grievance not been revived conflicts with the applicable decisions of this Court in Vaca v.Sipes,386 U.S.171 (1967);Hines v.Anchor Motor Freight,424 U.S.554(1976);Clayton v.International UAW, 451 U.S.679(1981);Bowen v.United States Postal Service,459 U.S.212(1983).

This Court has never held that granting some relief to a plaintiff operates to deny him a plenary hearing on all other meritorious, properly pleaded claims.

Question No.2 -Section I

If the opinion of the district court constitutes dismissal of claims or grant of summary judgment sua sponte, affirmance by the Third Circuit is in clear conflict with applicable decisions of this Court on these factually and legally sufficient issues:

(a) Breach of duty of fair representation (DFR). Before the opinion and order of October, 1986, in the district court, two union motions and one Ford motion for summary judment had been denied. Nothing but the succesful revival of the grievance occurred in the interval. Nothing had occurred to effect a vacating of the prior denials and the right to plenary hearing under Vaca, Hines, Clayton, and Bowen on breach of DFR.

(b) Employer subversion (ES). This claim arises out of the alleged outrageous failure of Ford to furnish correct information to petitioner's union(that he did not receive the notice until May 16) after furnishing false information(that he received it on May 4). Infrequently cited language of Vaca

at 386 U.S.186 holds that

> the employee should not be limited to the exclusive remedial procedures established by the contract when the conduct of the employer amounts to a repudiation of those contractual procedures.

Only one case on the subject has been located. Dogherra v.Safeway Stores,Inc., 484 F.Supp.396; 670 F.2d 1293(9th Cir.1982). However, this Court has held, N.L.R.B. v. Acme Industrial Co.,385 U.S.432(1967),435, that

> There can be no question of the general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties.

Nothing occurred prior to October, 1986, to remove this issue from the action.

(c) Compensatory damages not arbitrable. Petitioner claims damages for mental suffering arising out the long,whipsaw abuse by respondents prior to and during the litigation. The district court and the circuit court did not address this subject, which should be settled by this Court, and is supported by respectable authority. Farmer

v.ARA Services, Inc.,660 F.2d 1096,1106 (6th Cir.1981);Richardson v.Communication Workers, 443 F.2d 974,984(8th Cir.1971).

(d) Counsel fees. The circuit court affirmed the denial of counsel fees on the basis of the completely inapposite "American Rule".* This occurred in spite of petitioner's efforts to present the correct rule for allowance of counsel fees which is succinctly stated in Bowen v. United States Postal Service,459 U.S.212 (1983),236,footnote 6, which notes that

> ... such damages measure the extent by which the union's breach of duty adds to the difficulty and expense of collecting from the employer.

Counsel fees may be claimed under this apposite theory even if the claim against the employer is unsuccessful. Dutrisic v. Caterpillar Tractor Co.,749 F.2d 1270 (9th Cir.1983).

In defending against the assaults on his case, pressing his claims, and preparing for one trial date over a three year period before the revival of the grievance

*Pa31

and in pressing claims thereafter, exhausting legal services were performed on behalf of petitioner. But for counsel, petitioner's action could not have reached the point where revival of the grievance(a demand of the complaint)* could have occurred. Counsel fees are an essential part of the legal process for correcting malfunctions in the congressionally mandated system of private resolution. Others, like petitioner, may have to engage in legal combat with large employers and large unions to correct malfunctions. No success is possible without counsel's hard work. The chilling denial of counsel fees is at variance with usual judicial proceedings,approved by this Court.

(e) Punitive damages of Ford in firing petitioner in violation of the CBA and in refusing to reinstate him. Ford fired petitioner and refused to rescind its action in spite of evidence in its possession that he did not receive a notice on May 4. Ford knew this by late May but continued alleged

*Pa49

arrogance through a four year period including three years of litigation.(Pa44)

In Bowen v.United States Postal Service, 470 F.Supp.1127(W.D.Va.1979),1131,the employer was found to have fired plaintiff without just cause and in reckless and "callous" disregard of his rights. The district judge found that punitive damages were awardable;they were not awarded because the employer enjoyed a sovereign immunity from them. This Court at 459 U.S.215 and 216, note 4, reported the district court proceedings without disapproval.

> The District Court had instructed the jury that both the Union and the Service could be liable for punitive damages if either had acted "maliciously or recklessly or in callous disregard of the rights of the plaintiff [Bowen]".

This Court so observed(1983) some time after its decision in International v. Foust,442 U.S.42(1979), held that such damages were unavailable against a union. The callousness element appears again in this Court's decision in apposite civil rights

litigation. Smith v. Wade, 461 U.S.30,56 (1983).

> We hold that a jury may be permitted to assess punitive damages in an action under §1983 when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.

The ruling in this action on the issue of punitive damages in firing petitioner is not correct unless it is supported by a decision of this Court or the evidence is insufficient. The decision of the circuit court is not supported by a decision of this Court, and the evidence is abundantly sufficient. The issue should be decided by this Court. The system of private resolution is not promoted as long as petitioner's long ordeal can be inflicted with impunity.

(f) Punitive damages of Ford in subverting CBA grievance procedures. Ford failed to provide the union with correct information* (that petitioner received a notice on May 16, rather than May 4) at any time before his grievance was withdrawn by his local union.

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*Pa44

Punitive damages for this outrageous repudiation of CBA grievance procedures, which caused the union to believe that petitioner was lying*, is supported by the cases cited immediately above. Here,again, the employer's conduct should be punishable with the deterring effect that other employees may be spared the ordeal to which petitioner was subjected. If the affirmance by the circuit court is not in conflict with decisions of this Court, this issue should still be addressed by this Court. Summary judgment is inappropriate "where motive and intent play leading roles". Poller v. Columbia Broadcasting System,368 U.S.464,473.

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*Petitioner can think of no other reason for the union local's letter(unsigned) of March 17, 1982(Pa45)which is the first and only writing he received from the local after the GRIEVANCE (Pa43)was filed.

Question No.3-Section I

The defective portion of the umpire's DECISION(declining to consider back pay) reads as follows. (Pa14)

> Under the parties' Letter of Understanding on Reinstitution of Grievances dated October 5, 1976, the Company is not liable for back pay prior to the date of reinstitution.

The umpire equated the revival order of the district court of March 25, 1985, with a reinstitution of the grievance under the "Letter". Neither that order nor the "Letter" ever contemplated such a result following a court ordered revival of grievance. Neither the umpire nor any court below responded to petitioner's argument that, even if applicable, he was entitled to back pay from May 11, 1981(date of discharge) to January, 1982(date the grievance was allegedly withdrawn) under the very terms of the " Letter". (The "Letter" appears at Pa17.)

But the DECISION is here defective for an additional reason. Based frankly on the "Letter", it cannot draw its essence from

the CBA,because the "Letter" cannot be part of the CBA. The language of the "Letter" has never been shown to appear in or be part of any CBA booklet available to workers or anybody else since 1976.

There has never been a showing that the "Letter" was ratified as required by Section 4,Article 19, of the CONSTITUTION OF THE INTERNATIONAL UNION, which reads:

> National agreements and supplements thereof shall be ratified by the Local Unions involved.

The "Letter" forms no part of a written contract as required by 29 U.S.C.§158(d).

> For purposes of this section, to bargain collectively is...the execution of a written contract incorporating any agreement reached if requested by either party...

The "Letter" is not even an agreement under basic contract law. At most it appears to be an offer which petitioner did not know of. There has never been a showing of ratified acceptance or any action in reliance. The "Letter" simply is not part of a CBA from which any essence can be

drawn by an arbitrator.

Finally, the third paragrpah of the "Letter" reads as follows. (Pa17)

> It is understood by the parties, however, that the Company will not be liable for any back pay claims from the time of original disposition to the time of reinstitution of the grievance and it is further agreed that the reinstitution of any such grievance shall be conditioned upon agreement by the Union and employe(s) that neither will pursue such back pay claim against the Company.

Petitioner never made such an agreement, and there is no record of a showing that his union did. But in no event can the "Letter" impose remedies, illusory or otherwise, upon petitioner which are less adequate than those available in litigation. Clayton v. International UAW, 451 U.S.679 (1981),685. And the seminal case on arbitral scope, United Steel Workers v.Enterprise Wheel &Car Corp., 363 U.S.593(1960), 597, holds that

> Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining

> agreement; he does not sit to dispense his own brand of industrial justice.

In this action, United Steel Workers does no more than echo the actual language of the CBA (Pa47) which provides that the umpire shall be empowered "to make a decision in cases of alleged violation of the terms of this Agreement or written local or regional agreements supplementary thereto". His powers are limited in that— "He shall have no power to add to or subtract from, or modify any terms of any agreement." (Pa47)

If the defective portion of the umpire's DECISION should be vacated, there are,as set forth in petitioner's briefs below, two bases for disposition of the back pay claim by the district court. First, the court has the power to compute and order the relief which the umpire disregarded. United Steel Workers v. Enterprise Wheel & Car Corp., 363 U.S.593,599. Second, the

court always had the power and duty to decide the claim in the litigation. Since the CBA arbitration malfunctioned in this one respect, the claim simply falls back to the court for resolution. Nuest v. Westinghouse, 313 F.Supp.1128(S.D. Ill. 1970),1237.

The OPINION OF March 11, 1985, ruled that "the grievance is to relate back to the date the grievance procedure was originally abandoned."(Pa2) The ORDER of March 25, 1985, provided that "the date of the grievance is to relate back to the date the grievance was originally withdrawn..."(Pa6) These were principal SUBMISSION documents. Petitioner took them to mean that the grievance was to proceed as if it had never been withdrawn.

The OPINION of October 3, 1986, permitted the arbitrator to reverse the court. (Pa18 et seq.)

No party, nor the court had considered

the "Letter" in connection with the back pay aspect of petitioner's damage claims before the umpire rendered his award in July, 1985. Even if operative, the "Letter" could not have been applicable had the grievance not been revived. But petitioner can find no comparable case in which an arbitrator has been permitted to overrule specific directions of a court.

(d)

OPINION BELOW

There was no opinion in the Third Circuit Court Of Appeals, Docket No.86-5782. The order of the court, dated, May 15, 1987, is as follows. (Pa70)

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is
ADJUDGED AND ORDERED that the judgment of the district court entered October 15, 1986 be and the same is hereby affirmed.
Costs taxed against appellant.

BY THE COURT,

/s/Weis
Circuit Judge

The opinion of the district court* is unreported. It is set forth in the Appendix insofar as it relates to this action.

(e)
JURISDICTION

The date of judgment sought to be reviewed is May 15, 1987. The subject matter jurisdiction of the district court is based on 29 U.S.C.§185(a).

Jurisdiction is conferred on this Court by 28 U.S.C.§1254(1).

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* Pa52

(f)

STATUTES INVOLVED

29 U.S.C.§185(a)(Section 301(a),Labor Management Relations Act) provides.

> Suits for violation of contracts between an employer and a labor organization representing an employee in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

N.J.S.A.2A:24-7[New Jersey] provides.

> A party to the arbitration may, within 3 months after the award is delivered to him, unless the parties shall extend the time in writing, commence a summary action in the court aforesaid for the confirmation of the award or for its vacation, modification, or correction. Such confirmation shall be granted unless the award is vacated, modified, or corrected.

(g)

STATEMENT OF THE CASE

Nature Of The Case

In this action petitioner seeks to confirm and enforce that portion of an arbitration award under a collective bar-

gaining agreement(hereafter "CBA") which reinstated him to his former position and directed that he be made whole for earnings lost since March 25, 1985, the date that the trial judge in a related action (Third Circuit,Docket No. 86-5787)ordered that his previously withdrawn grievance be revived.(Pa14,4)

Petitioner also claims that post award conduct of his employer constitutes employer subversion(hereafter "ES") of the CBA grievance procedure. He also claims that Local 980 and the International UAW in post award conduct breached their duty of fair representation(hereafter "DFR") and fiduciary duty in failing to commence post award legal proceedings for him and in actively joining his employer against him on every issue. All claims are at Pa71.

Course Of Proceedings Below

Shortly after answers were filed, petitioner moved for confirmation and

enforcement of the favorable portion of the arbitration award. Each defendant moved for summary judgment. The district judge advised that he would decide these motions without oral argument and rendered his opinion in October, 1986. He did not rule explicitly on petitioner's motion. Each defendant's motion was granted. Since the order of the court confirmed the award and since confirmation was relief for which plaintiff had moved, the action was in a somewhat unclear posture. In effect, the court modified the award to correspond with the employer's interpretation,pursuant to which it refused to put petitioner to work or make him whole. (Pa39,69)

Statement Of Facts

Petitioner was fired by respondent Ford in May, 1981, for alleged failure to comply with a five-day notice. In a re-

lated action(Third Circuit,Docket 86-5787) the trial judge by order of March 25,1985, ordered that petitioner's grievance, withdrawn by his union local in January,1982, be revived and continue from the point at which it had terminated in the CBA grievance procedure. (Pa4)

The grievance became the subject of an umpire's award(hereafter the "DECISION") dated, July 16,1985, which awarded that

(Pa14) The Aggrieved shall be reinstated to his former position with full seniority rights and shall be made whole in the usual manner for earnings lost since March 25, 1985, the date the Federal District Court ordered reinstatement of the grievance, which had previously been withdrawn.

The DECISION was served on all parties before the end of July, 1985. However, respondent Ford did not return petitioner to work and payroll, nor did it make him whole. Not knowing how long this conduct would continue and mindful of a six month statute of limitations, petitioner's counsel requested action by his union. That

request was not honored, and this action was commenced.

Respondent Ford's position,stated in its answer to petitioner's FIRST COUNT, is that

> Assuming that plaintiff's employment had not been terminated in May, 1981, he would have been laid-off on March 11, 1983. In accordance with his seniority lay-off status the plaintiff is currently 39th on the recall list and based upon Ford's current operations in New Jersey, the plaintiff is not eligible for recall and he would not have lost any earnings(based on employment with Ford)subsequent to March 25, 1985.

This contention was <u>not</u> put to the umpire in the CBA arbitration. The workings of the alleged recall list also had not been the subject of evidence before the court. Ford contends that it compled with the DECISION by placing petitioner on such a list. In June, 1986, it recalled petitioner to work. It has never made him whole for earnings lost since March 25, 1985.

Respondent Ford did not move to

vacate or modify the DECISION within the three month period of N.J.S.A.2A:24-7, as mandated by federal labor decisions, or within the identical time provided by 9 U.S.C.§12 of the federal arbitration statute. Nor was its answer filed within that period of time.

The respondent unions, in spite of the facial merit of petitioner's post award claims and need for relief,refused to represent him,and their counsel,rather than remain silent or neutral on issues concerning Ford alone, argued in support of Ford on every issue concerning it.

Statement Of Related Case

Pursuant to RULE 19.4 this petition is filed to cover also the Third Circuit JUDGMENT ORDER in Docket No.86-5787, which is related to this action. This action seeks to confirm and enforce the portion of the umpire's DECISION which awarded relief and seeks relief from POST AWARD

conduct of respondents only, that is conduct which occurred only after the umpire rendered his DECISION in July, 1985.(Pa71)

The related action arises from the discharge of petitioner in May, 1981, and his claims that a defective portion of the umpire's DECISION should be vacated. Only PRE-AWARD conduct is involved.*

(h)(i)

BASIS FOR FEDERAL JURISDICTION IN THE DISTRICT COURT

This action was filed in the Superior Court Of New Jersey. On the basis of 29 U.S.C.§185(a), respondent Ford moved for transfer to The United States District Court For New Jersey, which has jurisdiction pursuant to 28 U.S.C.§1331.

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*The related action is the subject of Section I of this petition.

(j)

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

Question No.1 - Section II

The relevant portions of the CBA with respect to the appeal follow.

> Article IV,Section 3
> The Company retains the sole right to discipline and discharge employees for cause, provided that in the exercise of this right it will not act wrongfully or unjustly or in violation of the terms of this Agreement.
>
> Article VII,Section 16
> (a) Scope Of Powers
> It shall be the function of the Umpire, and he shall be empowered, except as his powers are limited below, after due investigation, to make a decision in cases of alleged violations of the terms of this Agreement or written local or regional agreements supplementary thereto, of grievances...
> (b) Limitations on Powers
> The powers of the Umpire are limited as follows:
> (1) Changes in Agreements
> He shall have no power to add to or subtract from, or modify any terms of any agreement.
> (2)...[Not applicable]
> (3) Matters within Company Discretion

He shall have no power to substitute his discretion for the Company's discretion where the Company is given discretion by this Agreement or by any supplementary agreement,except that where he finds finds a disciplinary layoff or discharge is in violation of the standards set up in this Agreement, he may make appropriate modifications of the penalty.

Section 19.Finality of Umpire Awards;Exclusiveness of Remedy

There shall be no appeal from an Umpire's decision. It shall be final and binding on the Union, its members, the employe or employes involved and the Company.

The scope of issues resolvable by an arbitrator is determined by the submission documents. In this action these are the CBA, the grievance, the judge's opinion and order of March, 1985. Piggly Wiggly v. Piggly Wiggly,611 F. 2d 580(5th Cir.1980), 583,584; Virgin Island Nursing v.Schneider, 688 F 2d.221(3d Cir.1981),223; International v.Mobay,755 F.2d 1107(4th Cir.1985), 1110. (Pa43,2,4)

The rule regarding court review of arbitration awards is that the court must

defer to the award so long as it draws its essence from the CBA. United Steel Workers v. Enterprise Wheel & Car Corp., 363 U.S.593(1960); W.R.Grace v. Rubber Workers, 461 U.S.757(1983). Although he opined that he followed this rule and was affirming the umpire's DECISION, the trial judge took extensive notice of the alleged possible layoff, which had not been the subject of evidence before him or the umpire, and radically modified the award or, in effect, vacated it and substituted his own. This conduct, not found in any reported case, was affirmed by the circuit court. (OPINION at Pa52)

The umpire found nothing with respect to a recall list because the subject was not presented to him. (On the other hand, if he did take notice of such a list, his DECISION is even more impervious to modification.) He awarded that petitioner (1) "be reinstated to his former position" and (2) that he be made whole

from March 25, 1985. (Pa14)

The opinion and order of the trial court transformed this award into an award that petitioner (1) be restored to his "former position" on a recall list that he had never been on(because he was fired in May, 1981, and allegedly would have been laid off in March, 1983) and (2) NOT be made whole. (Pa 56,69)

Petitioner commenced this action to confirm the award as written by the umpire and to enforce it because he had received no wages or call to work pursuant to it. The trial judge confirmed an award that petitioner need not be called to work or paid anything. Such an award has never existed.

If words have meaning, the court of appeals affirmed the granting of respondent Ford's application* for vacating or modifying the DECISION in a trial court opinion which stated that it was doing something else.(Pa52 et seq.)

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*It was never the subject of a motion.

Had the matter of the alleged recall list been presented to the umpire, he would have had authority, from the essence of the CBA, to award as he did. He had authority to fashion a just award. Local 863 Intern.Broth.v.Jersey Egg Prod., 773 F.2d 530(3d Cir.1985). He might(or may) have found that petitioner, having been unjustly discharged, had been unemployed longer than anybody else on an alleged recall list and that he should, therefore, be at the top of it. He might also have found that excepting petitioner from an alleged recall list was a de minimis matter. International Brotherhood v.Washington Employers,557 F.2d 1345(9thCir.1977),1350.

In affirming a trial court opinion which erroneously modified or vacated an award in a labor arbitration while stateing it was not doing so, the court of appeals sanctioned a departure from the usual course of judicial proceedings

which calls for an exercise of this Court's power of supervision. The substance or result of the affirmed opinion of the district court conflicts with decisions of this Court cited above.

Question No.2-Section II
Statue Of Limitations

Respondent Ford contended that the DECISION must be construed to mean something other than what it stated. Whatever the precise nature of the relief which Ford wanted or required(Modification? Vacation? Interpretation? Declaratory Relief?) on whatever grounds(Umpire exceeded CBA authority? Intrusion on management rights?),it was necessary to move for the desired relief or raise it in an answer within the three month period of 9 U.S.C.§12(The Federal Arbitration Act) or the three month period of N.J.S.A. 2A: 24-7 of New Jersey made applicable by federal decisions in the field of labor law in the Third Circuit and most others. Service Employees Union v. Office CTR, 670 F.2d 404(3d Cir.1982),412; United Brotherhood, v.FMC Corp.,724 F.2d 815 (9th Cir.1984). Ford did not do so.

The trial court granted relief which was precluded by the statute of limitations. That an untimely challenge to an arbitrator's decision runs counter to the federal labor policy favoring expeditious disposition of arbitration claims is beyond question. Federation v. Westinghouse, 736 F.2d 896(3d Cir.1984),901.

Waiver

From Ficek v. Southern Pacific,338 F.2d 655(9th Cir.1964), through Teamsters v. J.H.Merritt,770 F.2d 40(3d Cir.1985), to Dreis & Krump Mfg. v.Intern.Ass'n of Machinists, 802 F.2d 247(7th Cir.1986), petitioner has not located any departure from the application of waiver to failure to submit an issue to an arbitrator.

International v. Mobay,755 F.2d 1107 (4th Cir.1985),1112, contains one of many statments of the waiver rule.

> The union could not voluntarily engage in the arbitration of the issues submitted to the arbitrator

> and then attack the award on grounds not raised before the arbitrator.

The trial court in this action granted relief on the basis of the alleged possible lay off in 1983 and a recall list, neither of which were part of the record before the umpire. The circuit court, in affirming, decided a matter of federal labor law in a manner in conflict with its own rulings and those of other circuits and approved, without opinion, a departure from the usual course of judicial proceedings in the field of federal labor law, with respect to the statute of limitations and the applicable waiver rule.

Question No. 3 -Section II

Respondent Ford engaged in self-help in the face of an umpire's award. Ford chose not to submit the lay off-recall matter to the umpire, and, then, having lost in the arbitration on the matter of wrongful discharge,elected to treat the umpire's DECISION as if the umpire had awarded in Ford's favor on the very issues which Ford concealed from him.

Vaca v.Sipes,386 U.S.171(1967),186, did not overlook employer subversion(ES).

> [T]he employee should not be limited to the exclusive remedial procedures established by the contract when the conduct of the employer amounts to a repudiation of those contractual procedures.

See,also, Dogherra v.Safeway Stores,Inc., 670 F.2d 1293(9th Cir.1982).

Petitioner claims counsel fees on the theory summarized in Bowen v. United States Postal Service, 459 U.S.212(1983), 236 ,footnote 6, and punitive damages for

"callous"disregard of his rights as referred to in Bowen at 459 U.S.216.

The nature and extent of employer liability for POST AWARD conduct in the field of federal labor law is an important federal question which has not yet been settled by this Court.

Question No.4 -Section II

No investigation other than reading the umpire's DECISION was necessary for the union local in regard to post award conduct. Yet it abandoned its duty as petitioner's exclusive representive under the CBA. In every reported case a union has fulfilled its post award DFR by moving to confirm or vacate or by defending and counterclaiming for confirmation in timely fashion.* There are

* Kane Gas v.International Brotherhood, 687 F.2d 673(3d Cir.1982);Brotherhood v.Celotex,708 F.2d 488(9th Cir.1983); Federation v.Westinghouse,736 F.2d 896 (3d Cir.1984);International v.Mobay, 755 F.2d 1107(4th Cir.1985);Teamsters v. J.Merrit And Company,770 F.2d 40 (3d Cir.1985);American Postal Workers v.United States, 789 F.2d 1(D.C.Cir.1986); W.R.Grace v.Rubber Workers,461 U.S.757 (1983).

many more cases than the samples cited.

Petitioner claims counsel fees under the theory of Bowen cited in regard to respondent Ford above. To these he is entitled even if claims against the employer are not successful. Dutrisic v. Caterpillar Tractor, 749 F.2d 1270 (9th Cir.1983).

Petitioner also claims punitive damages for the egregious breach of DFR and fiduciary duty. Since International Brotherhood of Electrical Workers v. Foust, 442 U.S.42(1979), applies to "a union that breaches its duty of fair representation by failing properly to pursue a grievance",union punitive damages for post award conduct is undecided by this Court.

Question No. 5-Section II

It was the duty of the local union to represent petitioner at the hearing before the umpire. Private counsel was not present. The local union delegated the representation to the parent union whose Mr. Lew Caulford performed this task most ably. Thereafter, in the post award period, the parent union, which had assumed a duty of fair representation and was always under a fiduciary duty, joined the local union in the complete abandonment of petitioner.

The nature and extent of the liability of a parent union for POST AWARD conduct has not been, but should be settled by this Court.

Petitioner's claims with respect to all respondents in this action appear in the pre-trial stipulation at Pa7 1.

CONCLUSION

This petition covering two actions follows the claims which arose from the grievance, abandoned because of breach of DFR, ES, or both, through an arbitration award and beyond. After well fashioned relief, revival of the grievance, was ordered, the judicial supervision below of the system of private resolution abruptly became erroneous. That system, it is submitted, again requires the attention of this Court.

Each question presented for review is an important question which should be settled by this Court.

Respectfully submitted,

Judson L. Levin

JUDSON L. LEVIN
Attorney For Petitioner Dobbs

DATED: July 20 ,1987

87-196

No.

Supreme Court, U.S.
FILED
JUL 20 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1987

ARTHUR DOBBS,
Petitioner,
vs.
FORD MOTOR COMPANY; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW; AND LOCAL 980 UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
Respondents.

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JUDSON L. LEVIN
Suite 202
46 Branford Place
Newark, New Jersey 07102
(201) 623-0505
Attorney For Petitioner Dobbs

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*District Court Docket No. 85-5660; Court Of Appeals No.86-5782

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No.82-2170

Arthur Dobbs, Plaintiff,
vs.
Ford Motor Company et al, Defendants.

ORDER DENYING DEFENDANT UNIONS' MOTION FOR SUMMARY JUDGMENT IN PART AND GRANTING SAID MOTION IN PART

Defendant unions having filed a motion for summary judgment; said defendants and plaintiff having submitted briefs; the Court having considered said briefs, heard oral argument, and filed a written OPINION: it is on this 21st day of November, 1983:

ORDERED that the motion for summary judgment of defendant unions is denied on all issues raised except for the issue of punitive damages.

It is further ORDERED that said motion is granted with respect to the issue of punitive damages.

/s/Clarkson S. Fisher
Clarkson S. Fisher
J.U.S.D.C.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Arthur Dobbs, Plaintiff
v.
Ford Motor Company, et al, Defendants.

Civil Action No. 82-2170

EXTRACT FROM TRANSCRIPT OF HEARING
ON MOTION TO REINSTATE GRIEVANCE

THE COURT: /March 11, 1985

The union is ordered to prosecute the grievance in the same good faith manner they process any CBA grievance. The grievance is to proceed within one month and the date of the grievance is to relate back to the date the grievance procedure was originally abandoned. The parties are to proceed with plaintiff's grievance procedure under the CBA grievance procedure from the point when it was withdraw[n]. This Court will not supervise the grievance procedure except to the extent that plaintiff is free to return to this Court should he fail in his attempt to resolve his claim through first the grievance procedure and then arbitration as provided for in the CBA.

*** *** ***

In conclusion, this matter is administratively terminated until the plaintiff has pursued the union's grievance from the point where it was terminated through arbitration should that be necessary. Plaintiff's motion for attorney fees, punitive damages and summary judgment are denied as premature.

Defendant Ford's motion to dismiss is denied.

Mr. Leith, would you draw an appropriate order?

Mr. Leith: Yes, I will.

District Court Order
Of March 25,1985

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No.82-2170

Arthur Dobbs,
Plaintiff,
v.
Ford Motor Company, et al,
Defendants.

This matter having been opened to Court by Judson Levin,Esq.,attorney for plaintiff, in the presence of Mattson, Madden & Polito,Esqs., attorneys for defendant, Ford Motor Company, John R. Leith, Esq., appearing,and Thomas Giblin,Esq., attorney for defendant, UAW,Local 980, on motions for an order:

1.Permitting plaintiff to maintain an action against Ford Motor Company on the issue of breach of the collective bargaining agreement;

2.For summary judgment against Ford Motor Company on the issue of employer misconduct;

3.For summary judgment against defendant, Ford Motor Company on the issue of discharge and violation of the collective bargaining agreement;

4.For summary judgment against defendant, UAW,Local 980, on the subject of liability;
5.Granting the plaintiff the right to a conditional revived grievance.

This matter having been further opened to Court by Mattson, Madden & Polito, attorneys for defendant, Ford Motor Company, John R.Leith,Esq.,appearing in the presence of Judson Levin,Esq.,attorney for plaintiff and Thomas Giblin,Esq.,attorney for defendant, UAW,Local 980,on motion for an order dismissing plaintiff's complaint and remanding the plaintiff's claim for arbitration;

The Court having considered written argument submitted by all counsel on behalf of their respective clients, heard arguments of counsel and good cause appearing,

It is on this 25th day of March,1985,

ORDERED that this action is administratively terminated and remanded to be processed by the UAW as a grievance pro-

ceeding on behalf of the plaintiff pursuant to the terms and conditions of the collective bargaining agreement between Ford Motor Company and the UAW; and

IT IS FURTHER ORDERED that the Union and Ford Motor Company are to proceed with the plaintiff's grievance procedure from the point when it was withdrawn and the date of the grievance is to relate back to the date the grievance was originally withdrawn; and

IT IS FURTHER ORDERED that the Union is to commence the grievance proceeding within thirty (30) days of the date of this order and to prosecute the grievance in the same good faith manner that all such collective bargaining agreement grievances are processed; and

IT IS FURTHER ORDERED that the plaintiff's motions for attorneys' fees, punitive damages and summary judgment are denied without prejudice; and

IT IS FURTHER ORDERED that the motion of defendant, Ford Motor Company, to dismiss the plaintiff's complaint is denied

/s/Harold A. Ackerman
HONORABLE HAROLD A. ACKERMAN

JUL 18 1985 RG-29

THE UMPIRE
FORD MOTOR COMPANY AND UAW

TERMINATION UNDER ARTICLE VIII SECTION 5(4) — CASE NO. 45,867
Arthur L. Dobbs — APPEAL NO.6585
Edison Assembly Plant-Local 980

MEMORANDUM DECISION

The Aggrieved was improperly terminated effective May 8, 1981, under Article VIII,Section 5(4), of the Master Agreement for failure to respond to a registered letter of May 1 instructing him to report in person to the Plant Medical Department on May 4 and notifying him his employment would be terminated if he did not report within five working days. The Aggrieved's seniority date was September 21,1972, and his last day worked was January 22,1981. He had been on medical leave until on or about May 1, based upon a series of notes from his physician diagnosing ailments related to his back.

The primary reason Aggrieved could

not be terminated on May 8 for failure to report within five working days in response to the May 1 letter is that it would have been impossible for him to do so. This was because he did not receive the letter until May 16. The basic purpose of the prescribed use of registered mail under Article VIII,Section 5(4),is to provide reliable evidence(by means of the return receipt) that the employee actually has been notified of what he is supposed to do before the Company takes action, or in the alternative to provide evidence that such notice cannot be given because the employee is not at his address of record, in which event the letter would be returned undelivered. Since the Company here had neither, it acted prematurely, and the Aggrieved was terminated without knowing his job had been in jeopardy--contrary to the purpose of Article VIII,Section 5(4).

The Company should have realized the Aggrieved had no intention of shirking whatever might be necessary to retain employment status. On May 6, the Company received a Form 5166 Attending Physician's Report dated May 1from the Aggrieved's personal physician with a diagnosis of "Fibro myositis muscles of the back," which estimated the future length of disability would be until May 11. Then on May 13, the Aggrieved voluntarily reported in person with a note from his personal physician stating he had been examined on May 11 for back pain and was available for light duty only. He was advised for the first time by the Labor Relations Representative who interviewd him that he had been terminated for failure to respond to the registered letter, despite the fact the Aggrieved attempted to explain (correctly) that he had never received the letter. No effort was made to verify

this explanation or to take advantage of that opportunity to conduct the examination by the Plant Physician which had been the objective of the letter.

The delay in delivery of the May 1 registered letter was due to the fact it had been incorrectly addressed to:

52 Doyer St.
Newark, NJ 07103

While this happened to be the address shown on the Aggrieved's Hourly Personnel Status Record, that address had been incorrectly copied by a clerical employee from the address entered by the Aggrieved on an Hourly Employment Application form he completed on May 18, 1977, upon being recalled from layoff.(A copy is attached as Appendix "A".) All the information on the face of this form had been printed by the Aggrieved, except the date and the Zip Code 07103, both of which were entered by the clerical employee.

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

To the Umpire, the street name looks more like "Dover"--which it was meant to be--than "Doyer"--which is what the clerical employee carelessly assumed without even checking. Apparently no one in Labor Relations responsible for sending out the May 1 letter noticed that the three notes from the Aggrieved's physician under scrutiny just prior to issuance of the letter showed his address as 52 Dover St.

Just how the clerical employee managed to come up with the 07103 Zip Code is beyond explanation. If she had taken the trouble to refer to a copy of the Post Office Office Zip Code Directory, it would have been immediately apparent that there is no Doyer Street in Newark, and that the Aggrieved's printing must be Dover St.,which carries Zip Code 07106. That presumably is what the Post Office itself eventually did, in the process of forwarding the letter to the Aggrieved's correct address:

52 Dover St.
Newark,NJ 07106

A notice of attempted delivery left in the Aggrieved's mailbox on May 13 led to his picking up the letter at the Post Office on May 16.

Since the delay in delivery of the registered letter thus was attributable to negligence of the Company in incorrectly recording the Aggrieved's address on its personnel records, he could not properly be terminated under Article VIII, Section 5(4), for failure to respond to a notice not yet received nor returned undelivered. And even assuming the Form 5166 received by the Company on May 6 and the note from the Aggrieved's physician submitted on May 13 did not provide satisfactory reason for his prior absence, that tangential fact still would not have justified his peremptory termination as of May 8 without being put on notice his employment was at risk so that he could report for work--which in essence is what he was try-

ing to do on May 13. Until then, the Aggrieved seems to have been acting on the assumption he still was on medical leave. There is no reliable evidence the Company had advised him to the contrary.

The Aggrieved shall be reinstated to his former position with full seniority rights and shall be made whole in the usual manner for earnings lost since March 25, 1985, the date the Federal District Court ordered reinstatement of the grievance, which had previously been withdrawn. Under the parties' Letter of Understanding on Reinstitution of Grievances dated October 5, 1976, the Company is not liable for back pay prior to the date of the reinstitution. Even without this Letter, the Umpire would have been reluctant to award back pay to the date of the Aggrieved's termination, which was brought about in part by his lack of due concern about his address of record. See Umpire

Decisions PDH-142,PDH-301,RG-1,and RG-26. On July 5, 1980, and on January 16, 1981, he had received similar registered letters from Labor Relations addressed to the 52 Doyer St. address, which must have been forwarded by the Post Office and should have alerted him to the possibility that something might be amiss in the Company's personnel records.

Dated July 16,1985.

/s/ Raymond Goetz

Raymond Goetz, Umpire

Copy of record attached to Umpire's DECISION

16a

AN EQUAL OPPORTUNITY EMPLOYER

Hourly Employment Application

PRINT ALL ENTRIES

JOB APPL. FOR	YRS. EXP.	WILLING TO WORK ANY SHIFT AND TO CHANGE SHIFT AS REQ'D. BY COMPANY	CURRENT DATE	HEIGHT	WEIGHT
	5	☑ YES ☐ NO	5-18-77	5.10½	

1B	SOCIAL SEC. NO. (5-13)	LAST NAME SUF. (12-24) 24	FIRST NAME (F.I. 25)	M.I. (26)	(33 + a)
1A	158286759	DOBBS	ARTHUR		

ADDRESS – NUMBER AND STREET (34-51)	CITY (52-63)	STATE (64-67)	ZIP CODE (68-72)	TELEPHONE NO. (73-79)
52 DOYER ST	NEWARK	N.J.	07103	373-7787

HOW LONG IN CITY	DATES OF U.S. MILITARY SERVICE
25 YEARS	

EDUCATION → INDICATE HIGHEST EDUCATION LEVEL COMPLETED	CIRCLE ANY ADDITIONAL EDUCATION YOU HAVE HAD	APPRENTICE TRAINING 1	APPRENTICE GRADUATE 2	OTHER (E.G. BUSINESS, TRADE OR VOCATIONAL SCHOOL) 3	NAME OF SCHOOL OR TRADE IF ADDITIONAL EDUCATION CIRCLED
11th					

IF EVER CONVICTED OF A CRIME, EXCEPT TRAFFIC, GIVE DATE, PLACE AND REASON ☐ NO

IF EVER DISCHARGED OR ASKED TO RESIGN, STATE CIRCUMSTANCES ☐ NO

PHYSICAL DEFECTS, IF ANY. ☐ NO

IF EVER SERIOUSLY ILL OR INJURED, STATE CONDITIONS AND DATES ☐ NO

LIST PAST EMPLOYERS STARTING WITH PRESENT JOB

NAME AND ADDRESS OF COMPANY	FROM MO.	FROM YR.	TO MO.	TO YR.	OCCUPATION	REASON FOR LEAVING	LEAVE BLANK RECORD CHK.
	9	72	8	75	WINDSHIELD		

GIVE NAME, ADDRESS, PHONE NO. OF PERSON WE SHOULD CONTACT IN EMERGENCY

374-6937

IRENE DOBBS 645 15th AVE NEWARK NJ.

IF EVER HIRED BY FORD OR SUBSIDIARIES, GIVE NAME OF PLANT AND DATES ☐ NO

I HEREBY AUTHORIZE INVESTIGATION OF ALL STATEMENTS CONTAINED IN THIS APPLICATION. I CERTIFY THAT SUCH STATEMENTS ARE TRUE AND UNDERSTAND THAT MISREPRESENTATION MAY BE CAUSE FOR SEPARATION.

APPLICANT'S SIGNATURE X Arthur L. Dobbs

October 5, 1976

Mr. Ken Bannon, Vice President
International Union, UAW
8000 East Jefferson Avenue
Detroit, Michigan 48214

Dear Mr. Bannon:

The Company and the Union have long recognized that the mutually satisfactory resolution of employe complaints in the grievance procedure, by authorized Company and Union officials, results in a final and binding determination for both parties as well as the employe involved. The parties' recognition of this principle has contributed stability and certainty to the grievance procedure. Accordingly, the Company views any attempt to reinstitute such claims by either party as being antithetical to the purposes for which the grievance procedure was established.

However, subject to the provisions of Article VII, Section 19 of the parties' Agreement, in those instances where the UAW's International Executive Board, Public Review Board, or Constitutional Convention Appeals Committee have reviewed a grievance disposition and found that such disposition was improperly concluded by the Union body or representative involved, the National Ford Department may so inform the Labor Relations Staff of the Company and request in writing that such grievance be reinstituted in the parties' grievance procedure at the same level at which it was originally settled. After receipt of such written request, the grievance will be so reinstituted by the Company.

It is understood by the parties, however, that the Company will not be liable for any back pay claims from the time of original disposition to the time of reinstitution of the grievance, and it is further agreed that the reinstitution of any such grievance shall be conditioned upon agreement by the Union and the employe(s) that neither will pursue such back pay claim against the Company.

This letter is not to be construed as modifying in any other way either party's rights or obligations pursuant to the Collecive Bargaining Agreement or the final and binding nature of any other grievance resolutions. It is also understood by the parties that this letter of understanding and the Company's obligation to reinstitute grievances consistent with the conditions set forth above and upon written request from the Union, can be terminated by either party upon thirty (30) days' notice in writing, to that effect.

Very truly yours,

ROBERT M. MIDDLEKAUFF, Director
Labor Relations Planning Office

Copy of LETTER referred to in Umpire's DECISION but not attached thereto

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
[Court Of Appeals No.86-5787]

ARTHUR DOBBS, :
Plaintiff,
:
V.
:
FORD MOTOR CO.;INTERNATIONAL
UNION, UNITED AUTOMOBILE, AEROSPACE :
AND AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, UAW;and LOCAL 980,UAW, :
Defendants.
:

Civil Action No.85-5660[sic]*

O P I N I O N

FILED
OCT 3 1986

ACKERMAN,DISTRICT JUDGE

*The correct docket number is 82-2170. The OPINION also decided the related case bearing docket number 85-5660. Only the portions of the OPINION which relate to number 82-2170 are included here.
The OPINION in original form may be read by reading the sections preceded by num-

bers in brackets in chronological order beginning here and at Pa53.

---

[1]

This case has a tortuous and lengthy history which I must detail in order to provide the necessary background to my rulings which follow.

Plaintiff Dobbs was initially employed by defendant Ford in 1972 and continued in that employment until May of 1981, when he was terminated by Ford on the basis that he failed to respond to a notice to report for a physical examination at the Ford Medical Department following an extended sick leave. The circumstances surrounding this notice and subsequent discharge form the basis for this entire controversy.

During the spring of 1981, Dobbs was on a conditional medical leave which had been extended a number of times by the nurses employed in Ford's Medical Department. On April 30, 1981, during the course of his duties as Ford's plant physician, Ferdinand

Flick, M.D.,reviewed the medical information which had been submitted to substantiate the application by Dobbs for an extended medical leave.

On review of the information submitted by Dobbs, Flick decided that the information was not sufficient to form the basis for an extension of the medical leave to include May 5, 1981. Flick contacted Ford's labor relations department and requested that Dobbs be instructed to report to the plant for an examination to determine his actual physical condition.

On May 1, 1981, Saul Weaver, an employee in the labor relations department, caused a notice to be sent to Dobbs requesting that he present himself within five working days for a physical examination and advising that if he failed to comply with the notice his employment would be terminated.

Weaver arranged to have the notice sent by registered mail to the employee's

address of record. He examined Dobb's personnel file and found that his address, according to company records, was 52 Doyer Street, Newark, N.J. He then sent the notice by registered mail as registered article number F3960.

As it subsequently was discovered, Mr. Dobb's actual address was 52 Doyer Street, not Doyer and the company records were incorrect due to sloppy printing[1] by Mr. Dobbs on his initial paperwork.[2]

The uncontradicted postal records indicate that on May 5, 1981, the letter carrier on the route that included 52 Doyer Street attempted to deliver the notice from Ford but was unable to make delivery. The carrier left a slip which stated that there had been an attempt to deliver a registered letter and that the letter could be picked up at a certain time at the Vailsburg station. Plaintiff Dobbs states that he never saw the slip left by the letter carrier on May 5th.

As of May 11, 1981, Dobbs had not appeared at the Ford plant as required by the notice to report. In accordance with his understanding of the requirements[3] of the collective bargaining agreement, Weaver then terminated Dobbs for failure to respond to the notice. On May 13, 1981, Dobbs appeared at the Edison Assembly Plant and Weaver advised him that his employment had been terminated for failure to report[4] in accordance with the May 1 notice.

The Post Office had determined that a Mr. Dobbs could not be found at 52 Doyer Street and had eventually tracked him down at 52 Dover Street. A second notice was left at 52 Dover Street on May 15, 1981, telling Mr. Dobbs that there was a registered letter for him. On May 16, 1981, Mr. Dobbs picked up the May 1 notice to report at the Post Office and signed for it.

On May 15,[5] while Weaver was com-

pleting his file on Dobbs, he observed that the company had not yet received the return receipt for registered article F3960. He then arranged for a tracer inquiry to be forwarded to the Post Office. On May 21, 1981, he received information from the United States Post Office indicating delivery of registered article number F3960 on May 4, 1981. On the basis of this communication,[6] Weaver concluded that Dobbs had received the notice on May 4, 1981.

Before Dobbs left the plant on the day he was told of his termination, he informed defendant Local 980 of his termination. The Union officials advised Dobbs to file a grievance, but Dobbs refused to do so until he saw a lawyer. Later Dobbs was called at home by a Local 980 representative who urged him to return to file a grievance. A representative from the Local also personally visited Dobbs to stress the importance of filing the grie-

vance. Plaintiff then finally returned to the Union office[7] to file the grievance.

After investigating[8] his claims, the Union pursued Dobbs' grievance to stage two of the grievance procedure.[9] On January 27, 1982, the Local notified plaintiff[10] that it had decided not to pursue the grievance any further. On March 17, 1982, the Union sent Dobbs a written confirmation[11] of this decision and enclosed a copy of Article 33 of the Constitution of the defendant UAW which provides for an appeals procedure for members who are dissatisfied with a decision of a local union concerning the processing of a grievance.

In October, 1981, the defendant Local had also obtained a settlement offer from defendant Ford pursuant to which Ford would reinstate plaintiff without backpay. Plaintiff turned the offer down.[12]

In May of 1981, Dobbs instituted suit in the New Jersey Superior Court Law Divi-

sion, which action was subsequently removed by defendants to this court(Civil Action 82-2170[Case No.86-5787,Third Circuit]. In late 1984, plaintiff disclosed to defendants that he had actually been at the Ford Medical Department on Monday, May 4, 1981, although he knew nothing of the notice to report at that time. He had gone to Ford to submit his own doctor's report, and was of the understanding that Ford's acceptance of this slip extended his medical leave to May 11.

Although it was never established why Dobbs waited over three years[13] to bring this fact to defendant's attention, I decided the parties should proceed through their bargained for grievance procedure in the light of this new development. On March 11, 1985, I administratively terminated Civil Action 82-2170 so that parties could determine through arbitration whether Mr. Dobbs' discharge was wrongful or not.

On July 16,1985, the umpire hearing the grievance ruled that Dobbs had been improperly terminated...

* * * * * * * * *

[3]

Concerning the issue of backpay, the umpire stated:

> "Under the parties' letter of understanding on restitution[sic] of grievances dated October 5, 1976, the company is not liable for backpay to the date of reinstitution. Even without this letter, the umpire would have been reluctant to award backpay to the date of the aggrieved['s] termination,[14] which was brought about in part by his lack of due concern about his address of record . . . On July 5, 1980, and January 16, 1981, he received similar registered letters from the labor relations department addressed to the 52 Doyer Stree[t] address, which must have been forwarded by the Post Office and should have alerted him to the possibility that something might be amiss in the company's personnel records."

* * * * * * * * *

[5]

...Plaintiff has now brought numerous motions as follows:

1. a motion to vacate this court's administrative dismissal and to assign a date for trial or further proceedings on remaining issues;

2. a motion to award counsel fees for services to date;

3. an appeal from the umpire's decision not to award backpay;

4. a motion to include compensatory damages from defendant Ford for breach of the Collective Bargaining Agreement; and

5. a motion to include damages for the union breach of their duty of fair representation and for punitive damages against Ford and for counsel fees in any further proceedings. * * *

* * * * * * * * *

[7]

As all of these motions are closely interrelated, I will treat them jointly

to some extent. As submissions have been made beyond the pleadings, I will treat any motion to dismiss as one for summary judgment. I have resolved all issues of material fact in favor of plaintiff[15] in my recitation of the facts although very little has been contested of a factual nature. What is contested is the legal conclusions to be drawn therefrom.

At the outset, I note that plaintiff fails to recognize the scope of my review[16] in an appeal from an arbitration award. It is well established law that "the district court's scope of review over the arbitration award is narrowly circumscribed." Local 863,Teamsters v.Jersey Coast Egg Producers,Inc.,773 F2d 530(3d Cir.1985). The Third Circuit has emphasized time and time again that:

> "A court must defer to an arbitrator's decision 'so long as it draws its essence from the collective bargaining agreement.'... 'A federal court may not overrule an arbitrator's decision simply because the court believes its own interpretation of the contract would be the better one.' "

Id. Here, the umpire did not exceed his authority in any way and his decision draws its essence from the collective bargaining agreement.[17] I also find his decision eminently reasonable. I accordingly, deny plaintiff's motion to vacate the award.

* * * * * * * * *

[9]

The decision of the arbitrator will, therefore, stand and any motions plaintiff has made affecting it are denied. This includes plaintiff's complaints regarding the arbitrator's refusal to award backpay, plaintiff's request for compensatory damages from Ford and plaintiff's request for further proceedings on any issues that were before the arbitrator. As I stated earlier, the arbitrator's decision derived its essence in all respects from the CBA and I, accordingly, will not disturb it.

* * * * * * * * *

[11]

Plaintiff's claim for punitive damages against Ford is also without basis.

Courts considering the question of punitive damages have consistently concluded that they are inappropriate under the labor management relations act. See,e.g, Republic Steel Corp. v. National Labor Relations Board, 311 U.S. 7(1940). In Scott v. Plante, 641 F.2d 117,135(3d Cir.1981), the Third Circuit recognized that:

> The admonitory standard[for an award of punitive damages]requires that the fact finder determine that the defendants acted with actual knowledge that the defendantwas violating a federally protected right or with reckless disregard of whether he was doing so.

Here, the umpire made no findings that there was any actual knowledge by Ford[18] that it was violating plaintiff's rights. Indeed, the umpire essentially found that plaintiff himself was negligent and contributed to the unfortunate series of events.[19] In Dian v.United Steelworkers of America,486 F.Supp.700,706-707(E.D. Pa. 1980), the Court states:

> the strong federal policy against punishment and the substantial like-

> lihood of the disruptive impact an award of punitive damages invites upon the collective bargaining system compels the conclusion that punitive damages may not be assessed against a Union or the employer despite improper discharge or breach of representation duty.

I,accordingly, dismiss all of plaintiff's claims against defendant Ford also and confirm the arbitrator's award as to Ford also.[20]

Lastly, plaintiff's counsel seeks attorney fees for the work he has done in this action and defendant's[sic] seek rule 11 sanctions for what they allege were frivolous motions brought by plaintiff. The Third Circuit reviewed the standard for attorney fees in Kane Gas Light and Heating Co.v. Int't Brotherhood of Firemen and Oilers, 687 F.2d 673(3d Cir.1982):

> Under the American rule,[21] each party normally must bear the burden of its own legal expenses, including attorneys' fees. One of the narrow exceptions to this rule is a finding that the losing party litigated in bad faith, vexatiously, or for oppressive reasons.

Here, there is neither a winning nor a losing party[22] and there are no grounds on which I could make a finding that Ford or the Union litigated in bad faith. The arbitrator's decision reflects that all parties were partially justified in the positions they took in this litigation. I, accordingly, deny plaintiff's motion for attorney fees. Rule 11 of the Federal Rules of Civil Procedure provides that

> the signature of an attorney or party constitutes a certificate by him that he has read the pleadings, motion, or other paper; that to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law,and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

While there is no doubt than many of plaintiff's motions had no basis either in law or in fact, and that plaintiff caused defendant's to increase their costs by his frivolous duplicative filings,[23] I will

not go so far as to impose sanctions here.

Knowing the counsel involved here as I do and considering the unnecessarily long delay in bringing this case to a final resolution, I find it would be in the best interests of the court and the litigants to finally lay this matter to rest instead of engendering the further filings I am sure rule 11 sanctions would engender. In addition, while plaintiff's submissions were overly lengthy, confusing and mostly irrelevant, I do not find that they were intentionally vexatious, only misguided.

* * * * * * * * *

Petitioner has inserted footnotes in this OPINION in this appendix in order to designate errors and inaccuracies. The extent to which these may have influenced the circuit court is unknown because that court did not render an opinion.

1. ...sloppy printing... The umpire did not make such a finding and this is the only such comment to appear in the liti-

gation. The record appears at Pa16.

2. ...initial paperwork. The record seen at Pa16 is not initial paperwork. Only the court described it as such. Ford had many other records with petitioner's address thereon showing Dover Street.

3...his understanding of the requirements ... There has never been a showing of Weaver's understanding of specific CBA provisions.

4. ...terminated for failure to report... The OPINION nowhere refers to the binding finding of the umpire that on May 13, when Weaver fired petitioner, he had not received a return receipt card and had no proof that petitioner had or had not received the notice. (Pa9,13)

5. On May 15...The OPINION nowhere comments of the fact that two days after petitioner was fired for ignoring a notice which he denied receiving Weaver decided to check on whether or not it was received.

6. On the basis of this communication... A postal card which may have been misleading was received. It was not signed by petitioner. At about the same time the card showing receipt on May 16 and signed by petitioner was received and not made known to the union, it is claimed, during pendency of the grievance. See card(Pa44).

7. ...returned to the Union office... The grievance was apparently signed as of May 14. The circumstances surrounding the signing and filing have never ceased to be totally irrelevant to the claim of any party.

8. After investigating... There has never

been a showing of when, where, or how the union investigated.

9. ...to stage two of the grievance procedure. The top of the grievance form reads, "(GRIEVANCE STARTING SECOND STAGE ONLY)". This grievance began at stage two and was not pursued beyond stage two.(Pa43)

10. ...notified plaintiff...The form, time, place, and persons applicable to any communication have never been specified. Petitioner has always denied that any communication took place before March, 1982.

11. ...confirmation...This characterization has not appeared elsewhere in regard to this action. The letter of March 17th is not a confirmation. See Pa45.

12. Plaintiff turned the offer down. He has always denied that any offer was made known to him. There has never been a showing as to when,where, how, and by whom an alleged offer was communicated.

13. ...waited over three years...The information was disclosed at a deposition taken within five months of the commencement of litigation. The fact was not known earlier to the union local because its perfunctory "investigation" did not involve communicating with petitioner at any time after the facts sufficient to file the grievance were obtained from him.

14. ...backpay to the date of the aggrieved['s] termination... This phrase in the umpire's DECISION has no meaning.

15. ...resolved all issues of material fact in favor plaintiff... Although most,

if not all, material facts are undisputed, some irrelevant issues which seem to have been significant to the court were resolved against petitioner. These are: an alleged offer to reinstate without back pay in October, 1981;some form of communication with him by Local 980 in January, 1982,that his grievance was withdrawn; date defendants were first informed that he was at the plant medical department on May 4 or 5; sloppy penmanship. Ford's bad faith in failing to take any action after receiving firm proof(the signed postal card form dated May 16) that he did not receive a notice until May16, an extremely relevant issue, was also resolved against petitioner.

16. ...plaintiff fails to recognize the scope of my review...Petitioner's briefs show complete awareness of the scope of review which the trial court and the circuit court exceeded

17. ...decision draws its essence from the collective bargaining agreement. This conclusion, unsupported by any reasoning, makes no reference to petitioner's claim that the "letter of understanding" cannot modify or be part of the CBA from which essence must be drawn."Letter"at Pa17.

18. ...umpire made no finding that there was any actual knowledge by Ford... The umpire found that Ford knew that it had no proof that petitioner did or did not receive a notice mailed on May 1. As to any knowledge relevant to the issue of damages (1)arising out of callous disregard of rights and (2) ES, such issues were not cognizable by the umpire, were not before him, and could not be because he had no authority under the CBA to hear them. See DECISION of umpire at Pa9.

19. ...contributed to the unfortunate

series of events...The umpire's DECISION is not clear as to the period of time to which this dictum applies? May 11,1981, to January 21, 1982? January 21, 1982, to March 25, 1985? May 11, 1981, to March 25, 1985? (Pa14)

20....dismiss all of plaintiff's claims against defendant Ford and confirm the arbitrator's award as to Ford also. The decision to confirm the award suggests that this sentence may refer to the related action because confirmation is not an issue or claim in this action. If so, the OPINION is without any ruling and reason in this action on the subject of damages for callous disregard of rights in violating the CBA and of damages for ES.

21. ...Under the American rule...This rule is not applicable. Petitioner never raised it or relied on it.

22....neither a winning nor a losing party...Petitioner was fired, filed this action, fought off three motions for summary judgment before his grievance(as demanded in his complaint) was revived during four years of litigation, and was awarded his job. The subject of winning or losing, it is submitted,merited more discussion under these facts. However, the subject is essential only to the American rule, which is not applicable.

23. ...frivolous duplicative filings... The rule 11 claim was not made in this action, as indicated by the denial of it in the related action.* In that action petitioner filed only one motion. The comments and unsupported conclusions("increased costs","confusing",etc.) reveal the attitude of the court to the labor of dealing with the serious issues involved in this action.

---

*See Pa39,69

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ARTHUR DOBBS,
Plaintiff,
v.
FORD MOTOR CO;INTERNATIONAL UNION,UNITED AUTOMOBILE,AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,UAW:and LOCAL 980,UAW

Civil Action No. 82-2170

FILED
OCT 15 1986

O R D E R

IT IS on this 15th day of October,1986

ORDERED that

Plaintiff's motion to vacate this court's administrative dismissal is denied;

Plaintiff's motion to award counsel fees is denied;

Plaintiff's appeal from the umpire's decision not award backpay is denied;

Plaintiff's motion to include compensatory damages from both defendants is denied;

Plaintiff's motion to include punitive damages from both defendants is denied.

/s/ Harold A Ackerman

HAROLD A. ACKERMAN,U.S.D.J.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ARTHUR DOBBS,
Plaintiff,
v.
FORD MOTOR CO; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW: and LOCAL 980, UAW

Civil Action No. 85-5660

FILED
OCT 15 1986

AMENDED ORDER

It IS on this 15th day of October, 1986

ORDERED, that in amendment of an order entered on October 3, 1986, that

Defendant Ford's motion for summary judgment is granted;

Defendant Union's motion for summary judgment is granted;

Defendant Ford's and Union's motions for rule 11 sanctions are denied; and further

The award of the arbitrator is hereby confirmed.

/s/ Harold A. Ackerman
HAROLD A. ACKERMAN, U.S.D.J.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No.86-5787

ARTHUR DOBBS,
Appellant
v.

FORD MOTOR COMPANY;INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW:AND LOCAL 980,UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY (D.C. Civil No.82-2170)
District Judge: Honorable Harold A. Ackerman

Argued April 29, 1987
Before:Weis, Stapleton, and Hunter, Circuit Judges

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court entered October 15, 1986 be and the same is hereby affirmed.

Cost taxed against appellant.

BY THE COURT
/s/ Weis
Circuit Judge

29 U.S.C.§185(a)

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to citizenship of the parties.

42a

Notice sent on May 1, 1981 Date: 5-1-81

Dear Employe: Dobbs.

Because of the uncertainty of your need for continued absence, you are instructed to report to the plant medical department between the hours 10:00AM & 3:00PM on 5-4-81 reference your claim that your absence is due to illness.

You must report to the plant medical department and submit to a medical examination by the plant physician. This notice cannot be broken by telephone, you must report.

If you do not report as instructed within 5 working days (excluding Saturdays, Sundays, and holidays) your employment will be terminated and you will lose your seniority.

Please present this letter when you report.

Very truly yours,

Labor Relations Rep.

U N I O N G R I E V A N C E

(GRIEVANCE STARTING SECOND STAGE ONLY)
GRIEVANCE E 1354

Date 4/14/81[sic]

Employee Name A. Dobbs Badge No. 6154

Shift 2 Seniority 7/21/72 Dept. 50

Classification Windshield Install

Employee
Signed /s/ Arthur Dobbs

Nature of Grievance Unjust Discipline(Discharge) 4/13/81[sic]

Violation of Article 4 Section 3

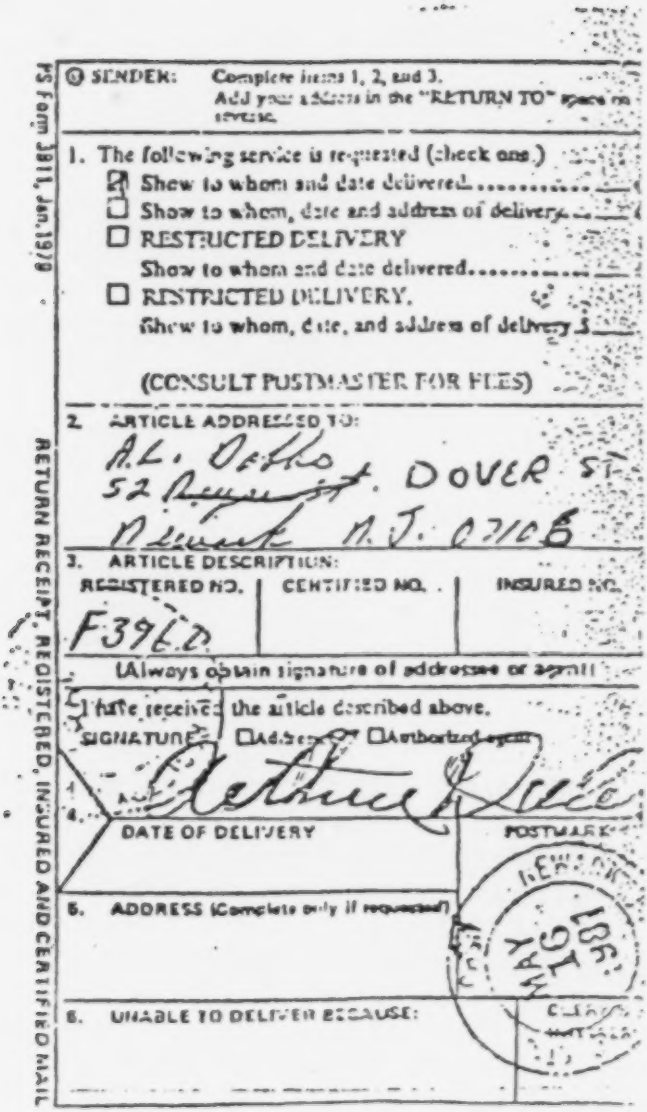
Statement of Case Aggrieved was unjustly TERMINATED ON 4/13/81[sic] for failure to ANSWER 5 DAY quit NOTICE. Union CONTENDS Aggrieved WAS ON A MEDICAL LEAVE of ABSENCE AND Aggrieved RECEIVED NO SUCH quit NOTICE AND ALSO Aggrieved followed ALL COMPANY RULES PERTAINING TO EXTENDING SUCH MEDICAL LEAVE. THEREfore Union CONTENDS DISCIPLINE WAS UNJUST.

The Adjustment Requested: RECORD BE CLEARED, REINSTATED with ALL SENIORITY,+ PAID ALL LOST TIME from 4/13/81[sic] INCLUDING ANY PREMIUM TIME.

Signed(Bargaining Committee) /s/Nail /s/Miner
/s/Jacobs /s/McMiller

Disposition by Company

Withdrawn
1/21/82



PS Form 3811, Jan. 1978 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
- ☒ Show to whom and date delivered.....
- ☐ Show to whom, date and address of delivery.....
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered.....
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery $

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
A.L. Datko
52 [illegible] St. DOVER ST.
Newark N.J. 07106

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
F396		

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
Arthur J. Dolle

4. DATE OF DELIVERY
POSTMARK
NEWARK NJ MAY 16 1981

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:
CLERK'S INITIALS

RETURN RECEIPT CARD SIGNED
BY PETITIONER ON MAY 16, 1981

LOCAL No. 980
56 Vineyard Road Edison,N.J.08817
287-0333-0334

"NEW JERSEY'S MOST PROGRESSIVE LOCAL UNION"

CERTIFIED MAIL
R.R.R

March 17, 1982

Mr. Arthur Dobbs
52 Dover Street
Newark,NJ 07016

Dear Mr. Dobbs:

This is in regards to your termination case with Ford Motor Company. The Union U.A.W. has heard your grievance and has decided to close and settle said Grievance #E-135-47. For reasons the Union felt that they did not hold merit to move to the Third Stage of the Collective Bargaining Agreement.

Please find enclosed the Constitution of U.A.W.(United Automobile Workers) and read Article 33 of said Constitution. If you need anymore assistance, please feel free to contack this local at anytime.

Fraternally,

[Unsigned]

Bargaining Committee of
Local #980,UAW

:mcc
Enclosure

Mattson,Madden & Polito
Counselors At Law
Gateway I
Newark,N.J. 07102

October 22,1984

Re:Arthur Dobbs v.
Ford Motor Company et al.
Civil Action No.82-2170

Honorable Harold A. Ackerman
United States District Court
U.S. Courthouse and Post
Office Building
Newark,New Jersey 07102

Dear Judge Ackerman:

* * * * * * * * *

...The plaintiff(who alleges that he was disabled and that this disability prevented him from working) alleges that he was not at home when the postal employee attempted to deliver the registered article and maintains that he never received the notice to pick up the registered article. After the plaintiff was terminated for failure to respond to the notice for physical examination, the Union filed a grievance on his behalf. At the time that the grievance was filed, Ford's Labor Relations Department believed that plaintiff had received the notice to report for physical on May 4, 1981. Even though the employee's actual receipt of the notice was not a prerequisite to his termination, the Labor Relations Department(based upon a good faith belief that the notice had been delivered on the fourth) advised the Union of delivery on that date.

* * * * * * * * *

The relevant portions of the CBA with respect to the appeal follow.

> Article IV,Section 3
> The Company retains the sole right to discipline and discharge employees for cause, provided that in the exercise of this right it will not act wrongfully or unjustly or in violation of the terms of this Agreement.
>
> Article VII,Section 16
> (a) Scope Of Powers
> It shall be the function of the Umpire, and he shall be empowered, except as his powers are limited below, after due investigation, to make a decision in cases of alleged violations of the terms of this Agreement or written local or regional agreements supplementary thereto, of grievances...
> (b) Limitations on Powers
> The powers of the Umpire are limited as follows:
> (1) Changes in Agreements
> He shall have no power to add to or subtract from, or modify any terms of any agreement.

(2)...[Not applicable]

(3) Matters within Company Discretion

He shall have no power to substitute his discretion for the Company's discretion where the Company is given discretion by this Agreement or by any supplementary agreement, except that where he finds finds a disciplinary layoff or discharge is in violation of the standards set up in this Agreement, he may make appropriate modifications of the penalty.

Section 19. Finality of Umpire Awards; Exclusiveness of Remedy

There shall be no appeal from an Umpire's decision. It shall be final and binding on the Union, its members, the employe or employes involved and the Company.

SUPERIOR COURT OF NEW JERSEY*
LAW DIVISION—ESSEX COUNTY
CIVIL ACTION

Docket No.L-53604-81

ARTHUR DOBBS,
Plaintiff
vs.
FORD MOTOR COMPANY,
Et Al,
Defendants

Dated
May 26,1982

[Extract] COMPLAINT
DEMAND FOR TRIAL BY JURY

* * * * * * * * *

SEVENTH COUNT

1.Plaintiff repeats the allegations of the preceding Counts.

Plaintiff demands restoration of his job, backpay, and restoration of all benefits and seniority.

EIGHTH COUNT

1. Plaintiff repeats the allegations of the preceding Counts.

Plaintiff demands reinstatement of his grievance arising out of his discharge which grievance must include demand for restoration of his job, backpay, and restoration of all benefits and seniority.

* * * * * * * * *

---

*The action was removed to the district court by Petition For Removal filed July 6, 1982,by defendant Ford and assigned No. 82-2170.

UNITED STATED DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ARTHUR DOBBS,
Plaintiff,
vs.
FORD MOTOR COMPANY, ET AL,
Defendants

Civil Action
No.82-2170

[Extract] SECOND PRE-TRIAL ORDER
Filed, November 9,1984*

9)Contested Issues of Law[Plaintiff]
1.Breach of duty of fair representation by defendant Unions. Was its conduct arbitrary, discriminatory, or perfunctory, or in bad faith, or inept, within meaning of relevant cases? Agency under 29 U.S.C 185(b).
2. Breach of Ford-U.A.W. contract by Ford.
3. Exhaustion of contractual remedies.
4. Damages and punitive damages.
5. Estoppel. This issue arises in connection with enforcement of notice to report (by firing) mailed at a time when Ford conduct induced plaintiff to believe that he was on approved medical leave. See 3 C.J.S.page 288,367.373,374.
6. Effect of employer misconduct which undermines and subverts the C.B.A. grievance procedure.
7. Putative PERM LAY OFF.

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* Subsequent rulings and events removed many issues from the case by the time of revival of the grievance in March,1985.

9a. CONTESTED ISSUES OF LAW [Ford]

1. Exhaustion of contractual and/or administrative remedies.
2. Breach of contract.
3. Right of Ford to discharge plaintiff.
4. Duty of plaintiff to mitigage damages.
5. Damages.
6. Plaintiff's right to seek punitive damages.
7. Estoppel.

9. Contested Issues of Law: [Unions]

1. Exhaustion of contractual and/or administrative remedies.
2. Breach of duty of fair representation.
3. Right of Ford to discharge plaintiff.
4. Estoppel of plaintiff to assert claims against defendant-unions.
5. Duty of plaintiff to mitigate damages.
6. Damages.
7. Plaintiff's failure to state a claim upon which relief can be granted.
8. Exhaustion of Internal Union Remedies.
9. Unclean hands.
10. Fraud and misrepresentation.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

[Court Of Appeals No.86-5782]

ARTHUR DOBBS,
Plaintiff,

V.

FORD MOTOR CO.;INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW;and LOCAL 980,UAW,
Defendants.

Civil Action No.85-5660*

O P I N I O N

FILED
OCT 3 1986

ACKERMAN,DISTRICT JUDGE

*The OPINION also decided the related action bearing docket number 82-2170. Only the portions of the OPINION relating to this action, number 85-5660, are included here.
The OPINION in original form may be read

by reading the sections preceded by numbers in brackets in chronological order beginning here and at Pa 19.

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* * * * * * * * *

[2]
[On July 16, 1985, the umpire hearing the grievance ruled that Dobbs had been improperly terminated]and directed that

> "the aggrieved shall be reinstated to his former position with full seniority rights and shall be made whole in the usual manner for earnings lost since March 25, 1985, a date the Federal District Court ordered reinstatement of the grievance which had previously been withdrawn."

* * * * * * * * *

[4]
An officer of the Local Union provided a copy of the decision to plaintiff and discussed it with him.[1]

Ford then restored plaintiff to the position he would have been in but for the improper termination. Because there had been a lay-off at the Ford Plant after plaintiff was terminated, plaintiff's former position was not that of an active employee.[2] It is the Union and Ford's position that Dobbs' "former position" is that of an employee who has been laid off[3] and is subject to recall. Upon receipt of the arbitrator's decision, Ford reinstated Dobbs to his former position on the list of employees eligible for recall.

It is my understanding, based on a letter from the Union's counsel dated June 16, 1986 that Mr. Dobbs was finally called back to work at Ford from the recall list on June 16, 1986.

Plaintiff then, for reasons unbeknownst[4] to anyone but himself, filed a new action in this court, the one presently before me(Civil 85-5660[Third Circuit Case No.86-5782]). It is not entirely clear

what plaintiff's theories are in this new action as plaintiff randomly refers to time periods both before and after the revived grievance and still labels his papers with the first civil number,[5] although he himself filed a second action. * * *

* * * * * * * * *

[6]

...Defendants Ford and the Union both have brought motions to dismiss plaintiff's complaint, or in the alternative motions for summary judgment and ask for rule 11 sanctions for having to defend plaintiff's suit.

* * * * * * * * *

[8]

Plaintiff contends that defendants have not interpreted the umpire's award properly since they did not immediately put Mr. Dobbs back to work. I see no error in the implementation of the arbitration decision. The arbitrator ordered Ford to reinstate Dobbs to his "former

position with full seniority rights." If Dobbs' former position led to a lay off, Dobbs is still in the same position he would have been in had he not be[sic] wrongfully discharged.[6]

The issue before the arbitrator was whether Dobbs had been wrongfully discharged.[7] The arbitrator determined that he was. Thus, the entire controversy that was before the arbitrator has been resolved. I never referred any lay off issue to the arbitrator.[8]

If Dobbs is now alleging that he was improperly laid off, that is a separate and distinct grievance[9] which is not a part of this wrongful discharge action. Mr. Dobbs contends that his seniority rights and job description are such that he should not have been in the group that was laid off. While the effect of this lay off just happens to coincide with the effects of Mr. Dobb's wrongful discharge,

the question of whether or not Ford's lay off was improper would have arisen even if Mr. Dobbs had not been discharged in May 1981. Mr. Dobbs' remedy, therefore, is to grieve the lay off issue as a separate claim.[10] It is simply not a part of this claim which determined soley that Mr. Dobbs was improperly discharged.[11]

Plaintiff contends that defendant waived its right to raise the lay off issue by not raising it in the arbitration. Defendant had no reason to raise the lay off issue as that was not before the arbitrator. In addition, plaintiff could just as easily have raised the issue[12] and asked for clarification in the remedy plaintiff was requesting.

* * * * * * * * *

[10]

Plaintiff continues to press his duty of fair representation claim against the union. Plaintiff has presented no facts in support of his claim, and has not contradicted beyond broad conclusory allega-

tions in his brief, any of the facts[13] provided in defendant's affidavits and exhibits. Indeed, counsel for plaintiff stated in a July 31, 1985 letter to counsel[14] for defendant UAW Local:

> "I do not hesitate to go on record here to the effect that, on the basis of what Mr. & Mrs. Dobbs have related to me, it appears that the grievance has handled[sic] with great competence on their behalf by the UAW representative."

It is not clear whether plaintiff's DFR claims arise out of actions the union took before or after the revived grievance,[15] but his action fails under either theory, as much as the court can discern any theory at all in plaintiff's papers.

First, of all, I should clarify that there has been no involvement at all here by the International,[16] and plaintiff has presented no grounds why the International should have been obliged to take any action. For the same reasons I dismissed plaintiff's suit previously in action 82-2170[Third Circuit Case Number 86-5787],

plaintiff fails to state a cause of action. against the International. For purposes of clarity, I will reiterate these reasons here.

First, Article 37,Section 8 of the Constitution of the International UAW states that "No Local Union...shall have the power or authority to represent,act for, commit or bind the International Union in any manner.... " Thus, it is clear that absent express authority, which is not here alleged, the conduct of the Local is not attributable to the UAW.

Second, the UAW itself never got jurisdiction of plaintiff's grievance because plantiff decided not to administratively appeal the Local's determination not to pursue the grievance beyond state [sic] two.[17]

Because all of plaintiff's allegations are directed against the defendant Local and because the Local and the Inter-

national are legally and factually separate entities, the UAW International cannot be liable to plaintiff, and any claims against it are dismissed. Plaintiff's DFR claim against the Local seems to be either that it failed to properly represent him to pursue his claim beyond stage two[17] or that it showed hostility to him by its defense of his suit. Either claim is without basis in law.

Under Article VII,Section 19 of the CBA[17] which governs plaintiff and the Local, the Local had no duty to appeal the initial determination of the umpire beyond stage two.[17] Thus, any DFR claim based on the fact that the Union decided not to pursue plaintiff's claim any further cannot stand.

Insofar as any claim is based on plaintiff's interpretation of the umpire's award to the effect that Ford was obliged to reinstate plaintiff to an active position, I have already commented on such a

position. Indeed, if Ford is correct in its contention that Dobbs would have been laid off, had he remained in their employ, the Union would have no power to do what Mr. Dobbs wanted it to do. The Union would have no power to upset Ford's seniority system[18] under the present CBA.

Lastly, plaintiff points to no specific aspect of the CBA that was violated by plaintiff[sic]. Under 29 U.S.C.§185(a), plaintiff's claim must allege violation of a contract[19] between an employer and a labor organization. See e.g. Carpenters Local Union No.1846 v.Pratt-Farnsworth, 690 F.2d 489,500(5th Cir.1982),rehg denied 696 F.2d 996(1983).,cert.denied, 461 U.S.942. Here,plaintiff's claims[sic] is essentially that the Union did not obtain for him all that he desired, regardless of whether his demands of the Union were in accord with the CBA.[20] The Union's motion for summary judgment is granted as plaintiff has presented no facts which

state any legally cognizable DFR claim.

Plaintiff's claim for punitive damages is also dismissed. Under International Brotherhood of Electrical Workers v.Foust, 442 U.S.42(1979), punitive damages in a DFR suit are not allowed. As the Supreme Court has stated, "punitive awards could impair the financial stability of unions and unsettle the careful balance of individual and collective interests which this Court has previously articulated in the unfair representation area." Id. at 48

Because my review of the arbitrator's award is narrow, I also dismiss plaintiff's claim against Ford. The arbitrator had already found against Ford, and Ford is implementing the decision to return plaintiff to his prior position insofar as was possible. If plaintiff seeks to sue Ford on the wrongful lay-off allegation,plaintiff must do so in a separate grievance.[21]

* * * * * * * * *

In conclusion, the decision of the arbitrator is confirmed, defendant's[sic] motions for summary judgment are granted and plaintiff's motions are denied. An order has been entered with this opinion.

Petitioner has inserted footnotes in this OPINION in this appendix in order to designate errors and inaccuracies. The extent to which these may have influenced the circuit court is unknown because that court did not render an opinion.

1. An officer of the Local Union...discussed it with him. Petitioner denies that the discussion consisted of more than a statement that he would hear from the local. He did not.

2. ...plaintiff's former position was not that of an active employee. The umpire did not make such a finding. The claim that a lay off would have affected petitioner had he not been fired was not presented to the umpire. This ruling can be nothing other than a modification of the umpire's DECISION.(Pa8 et seq.)

3. ...Ford's position that Dobbs' "former position" is that of an employee who has been laid off...Any articulation of this position is a CLAIM of some kind for relief from the award. Petitioner asserts that any such relief was barred by statute of limitations and waiver.

4. Plaintiff then for reasons unbeknowst... The word "then" implies that this action

was filed after he was called back to work. This action was filed in November, 1985, before a statute of limitations might bar it. At that time it was uncertain when if ever petitioner would be called back to work under Ford's interpretation of the umpire's DECISION.

5. ...not entirely clear what plaintiff's theories are...refers to time periods before and after the revived grievance... labels his papers with the first civil number. Since no example is cited, the reasons for this confusion or disparagement are not clear. Petitioners' theories clearly appear *in the complaint and pre-trial order. They relate unmistakably to post-award conduct. No paper relating to this action was labeled with the number of the first action. Motions in each case were pending before the court at the same time and this may explain the confusion of the court.

6. ...still in the same position he would have been in had he not been wrongfully discharged. Here, without discussion of the matter, the award that petitioner be made whole for the period from March 25, 1985, is simply vacated. The ruling is also factually falacious because if he had not been fired, he would have been paid for work up to the time of an alleged lay off.

7. The issue before the arbitrator was whether Dobbs had been wrongfully discharged. All issues raised by the grievance were before him. If the lay off claim be operative in spite of Ford's failure to raise it at arbitration, then petitioner has never had a hearing on the subject. Grievance appears at Pa43.

---

*See pre-trial order at Pa71.

8. I never referred any lay off issue to the arbitrator. The related case was filed in May,1982. Ford raised the lay off issue for the first time in June, 1984. No issue was excluded from arbitration when the court revived petitioner's grievance in March, 1985. Neither Ford nor the union local moved on the subject of arbitrability of any issue.

9. ...that is a separate and distinct grievance... Petitioner was fired as of May 11, 1981. His union abandoned his grievance on January 21,1982. He was forced to sue both employer and union in May,1982. In June,1984, Ford claimed for the first time that he would have been laid off in January,1982. After some discovery on this claim Ford was forced to change the date to March 23, 1983. There had been no finding or ruling on the date petitioner might have been laid off or if he would have been laid off at all when the court revived his grievance in March,1985. The court did not consider how he could file a grievance,WHEN HE WAS NO LONGER AN EMPLOYEE or MEMBER OF THE UNION,about an event (a lay off) which could not have happened because he had previously been fired for two years when it might have happened, and when he did not even learn of the claim of what MIGHT have happened until two years after it might have happened.

10. Mr. Dobbs' remedy, therefore, is to grieve the lay off issue as a separate claim. The impossibilty of doing so is explained in note 9 above.

11. It is simply not a part of this claim which determined solely that Mr. Dobbs was improperly discharged. This is

simply not true. All claims of the grievance were before the aribtrator. See also note 8 above. See Grievance at Pa43.

12. ...could just as easily have raised the issue... The lay off issue was a defense to petitioner's claims in the related litigation and then the arbitration. It was up to Ford to raise it or drop it. In any event, petitioner COULD NOT RAISE IT because he was represented at the hearing by Lewis Caulford of the UAW International who correctly refrained from raising the issue. Doing so might well have been a breach of DFR. See note 9.

13. ...not contradicted ...the facts... There were no disputed facts in connection with the pending motions and none in the related case decided at the same time.

14. ...letter to counsel...The letter refers to excellent conduct at the hearing, not to post award conduct.

15. ...before or after the revived grievance... Every allegation in this action expressly relates to post-award conduct. The reasons for the court's confusion are not stated. See Pa71.

16. ...no involvement at all here by the International... In this action petitioner has never claimed liability of the International on a theory of agency, imputed liability, or alter ego. Lewis Caulford was supplied by the International to represent petitioner at the arbitration hearing. The claim is that the International thereby assumed a DFR and fiduciary duty. See claims at Pa71 et seq.

17. ...stage two...The references to stage two might indicate that they are part of the ruling made simultaneously in the related action[No.82-2170]. However, reference to the umpire signals that this action is referred to. But there is no stage two beyond "the initial determination of the umpire". Petitioner never made such a nonsensical claim. The award of the umpire under the CBA is final unless altered by an order of the court. Article VII,Section 19, of the CBA provides that- "There shall be no appeal from an Umpire's decision." Petitioner, in this action, did claim that the unions should have moved timely to vacate the unfavorable portion of the award(which refused to rule on back pay). He also claimed that the unions should have sued to confirm and enforce the award as written and intended by the umpire.

18. ...no power to upset Ford's seniority system... One worker, who was fired before he might have been laid off, was the subject of the grievance, not the seniority system. Far more contradictory positions were arbitrated in W.R. Grace v. Rubber Workers,461 U.S.757(1983).

19. ...must allege violation of a contract...Petitioner alleged a fundamental violation of the CBA, failure to * comply with the DECISION of the umpire.

20. ...demands of the Union ...in accord with the CBA. The CBA does not govern the relationship between petitioner and the union. The UAW constitution, local by-laws, and case law governing DFR and fiduciary duty govern that relationship.

---

*See claims at Pa72.

21. If plaintiff seeks to sue Ford on the wrongful lay-off allegation, plaintiff must do so in a separate grievance. (a) It is impossible to "sue" on a grievance. Suing is done in a court; a grievance is a CBA procedure. (b) There has only been a "wrongful lay-off allegation" to this extent: Ford, in Action 82-2170, after two years of litigation claimed that petitioner, had he not been fired, would have been laid off in January, 1982, and later modified this date to March 23, 1983. Petitioner denied that the lay off applied to his job classification and left Ford to its proofs. The matter was in this posture when the court revived the grievance by order of March 25, 1985; the matter was not presented to the umpire by Ford even though it saw fit to raise it in the litigation. (c) No defendant claimed that petitioner could have grieved this subject, and there was no showing as to whether or not this was possible. It is not. The remedy suggested is illusory. See note 9 above. See also SECOND PRE-TRIAL ORDER of November 9, 1984, filed in the related action No. 82-2170.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ARTHUR DOBBS,
Plaintiff,
v.
FORD MOTOR CO;INTERNATIONAL UNION,UNITED AUTOMOBILE,AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,UAW:and LOCAL 980,UAW

Civil Action No. 85-5660

FILED
OCT 15 1986

AMENDED ORDER

It IS on this 15th day of October, 1986

ORDERED, that in amendment of an order entered on October 3, 1986, that

Defendant Ford's motion for summary judgment is granted;

Defendant Union's motion for summary judgment is granted;

Defendant Ford's and Union's motions for rule 11 sanctions are denied; and further

The award of the arbitrator is hereby confirmed.

/s/ Harold A. Ackerman
HAROLD A. ACKERMAN, U.S.D.J.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No.86-5782

ARTHUR DOBBS,
Appellant
v.

FORD MOTOR COMPANY;INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW:AND LOCAL 980,UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY (D.C. Civil No.85-5660)
District Judge: Honorable Harold A. Ackerman

Argued April 29, 1987
Before:Weis, Stapleton, and Hunter, Circuit Judges

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court entered October 15, 1986 be and the same is hereby affirmed.

Cost taxed against appellant.

BY THE COURT
/s/ Weis
Circuit Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ARTHUR DOBBS, Plaintiff,	)	Civil Action
v.	)	No.85-5660
FORD MOTOR COMPANY, et al, Defendants.	)	

[Extract] FINAL PRETRIAL STIPULATION

* * * * * * * * *

3.

A.Plaintif intends to prove * * * The following subjects were not presented to the umpire at the hearing before him and are not mentioned in the DECISION: (1) Lay-offs from the Ford Edison plant.(2) A recall list applicable to laid off workers.

Defendant Ford did not move to vacate or modify the DECISION within the time required by New Jersey law(N.J.S.A. 2A:24-7) or Federal law(9 U.S.C.§12). Ford filed an answer in this action on or about January 8, 1986.

Defendant Ford has not remitted any money or benefits to plaintiff for a period of time beginning March 25,1985.

Plaintiff was called back to work, effective, June 16,1986,and has received wages since that time.

Plaintiff is owed monetary benefits,pursuant to the DECISION,for the period beginning March 25,1985,until the date of his return to the regular pay roll.

Ford was required,by the DECISION, to make whole commencing March 25,1985, and to return plaintiff to the regular pay roll under authority of the DECISION, and on no other basis such as an alleged recall list.

In failing to obey the DECISION, Ford subverted and repudiated the CBA provisions relating to grievances. Such conduct has been intentional, contumacious, outrageous, and in reckless disregard of plaintiff's rights.

Ford has controverted plaintiff's claims for confirmation and enforcement of the DECISION in this action in bad faith.

LOCAL 980: Local 980 failed to undertake a timely motion to modify or vacate the portion of the DECISION which disregarded back pay before March 25, 1985, and sided with Ford when plaintiff was obliged to undertake such legal action in Action 82-2170 before being barred by the statute of limitations(90 days or three months). This defendant failed to communicate with plaintiff or undertake any action on his behalf when Ford refused to take any action pursuant to the DECISION. When plaintiff filed and moved in this action, Local 980 consistently opposed plaintiff's claims in its answer and filings.

UAW: The UAW assumed the duty of representing plaintiff at the hearing before the umpire. It has never given notice that the assumption of duty has terminated. It failed to undertake a timely motion to modify or vacate the

portion of the DECISION which disregarded back pay before March 25, 1985, and sided with Ford when plaintiff was obliged to undertake such legal action in Action 82-2170 before being barred by the statute of limitations(90 days or three months). It failed to communicate with plaintiff or undertake any action on his behalf when Ford refused to take any action pursuant to the DECISION. When plaintiff filed and moved in this action, the UAW consistently opposed plaintiff's claims in its answer and filings.

* * * * * * * * *

10. PLAINTIFF'S LEGAL ISSUES

Right to confirmation of DECISION.

Right to enforcement of DECISION.

Statute of limitations barring Ford defenses.

Waiver barring Ford defenses.

Scope of submission of grievance to umpire.

Repudiation and subversion of CBA grievance procedure.

Reckless, intentional disregard of plaintiff's rights.

Bad faith conduct of litigation.

Punitive damages.

Counsel fees.

Post arbitration breach of DFR.

Post arbitration breach of fiduciary duty.

Statute of limitations barring unions' outrageous espousal of Ford defenses.

Waiver barring unions' outrageous espousal of Ford defenses.